

IMPLEMENTATION COMMITTEE
Certified Access Specialist Program

Minutes of Meeting – REVISED
Wednesday, April 14, 2004
1:00 p.m. to 4:00 p.m.

Committee Members Present

James Abrams
Suzy Ambrose
Patricia Barbosa
Yolanda Benson, represented by
Nanette Madsen
Jürgen Dostert
Pete Guisasola
Dan Larsen
John Lonberg
Gene Lozano
Philip C. Rubin
Michael Paravagna
Patricia Yeager

DSA Staff Present

Mary Ann Aguayo
Wayne Hawkins
Rod Higgins
Linda Huber
Karen Hodgkins
Andreas Michael
Mark Smith

Call to Order and Introductions

Rod Higgins called the meeting to order at 1:15 p.m. Robyn Dahlgren introduced herself as the committee facilitator and asked participants and public members to introduce themselves.

Ground Rules

Ms. Dahlgren introduced the ground rules for the meetings: the group will use a consensus driven vote for recommendations; meeting end time may fluctuate depending on the nature of the discussion; but, any change will be by group decision; and, on items where consensus is not reached, a major and minor reporting of the item will occur.

Karen Hodgkins reminded staff that this is a volunteer commitment and fiscal compensation of travel, time or per diem costs is not available unless special circumstances exist. Special requests should be made directly with Ms. Hodgkins.

Administrative Issues

DSA Staff passed out the Bagley-Keene Open Meeting Act to committee members. Jim Abrams indicated a typographical error in his phone number as listed on the roster. His correct telephone number is: 916/ 554-2676. Both Stephan Castellanos and Michael Mankin were unable to attend the meeting due to illness.

Legislative efforts culminating in Senate Bill 262 (Chapter 872, Statutes 2003)

Will Brieger, Attorney General's Office of Legislative Affairs, gave a brief background on SB 262 (Chapter 872, Statutes of 2003), indicating it was a step forward for accessibility issues. The legislation creates a voluntary certification program that may provide the onus for a more rigorous program in the future. The two themes of Mr. Brieger's presentation were:

1. He shared a number of stories of people who were denied access, and of facility owners who are unsure of the building code. Mr. Brieger shared a story of a building owner who upgraded a facility but was still sued because the upgrade did not meet accessibility code. Too often building/design professionals are not sufficiently knowledgeable of the varied accessibility codes and requirements. Currently, there is not enough

1 understanding of what laws prevail. He emphasized that the law should provide
2 certainty to citizens. The CASp is a big step in the right direction.
3

- 4 2. Enforcement. Aspects of the enforcement of this program will need to be determined or
5 it will be meaningless. The program will need to determine the training and testing
6 components to ensure that the knowledge is sufficient to advise of, or advocate building
7 accessibility.
8

9 **Committee Responsibilities as Mandated by Legislation**

10 DSA is pleased with the many leaders of government agencies and private organizations who
11 have agreed to participate on this committee. After reviewing the questionnaires given to each
12 of the members, Mark Smith indicated that the committee member composition showed a total
13 of 194 cumulative years experience in the access field.
14

15 The committee's role is limited to that of an advisory body to the State Architect for the purpose
16 of assisting in the development of the requirements for certification as access specialists. The
17 ad hoc committee is temporary in nature with the criteria to be established by the end of year.
18 The committee may opt to file a final report with the State Architect in December 2004.
19

20 Mr. Smith gave a brief overview of the sequence of work to be completed by DSA for this
21 project. He impressed upon the committee that CASp work depends on the committee's timely
22 advice on certification criteria so the project timeline must be maintained. Future meeting topics
23 were shown within the project plan.
24

25 Mr. Smith also discussed other responsibilities mandated by the legislation, as follows:

- 26 • Indemnifies state agencies and employees from performance of certified specialist
- 27 • Adds county counsel to list of entities that may bring an action to enjoin a disability
28 violation
- 29 • Establishes civil penalties (\$2500) per violation
- 30 • Establishes additional penalties (\$500-\$2500 per day) for not correcting violation within
31 reasonable time
- 32 • Prescribes the plaintiff to be governmental entity. Allows separate litigation by the
33 injured party
- 34 • States the disposition of penalties received
35

36 Lastly, Mr. Smith requested help on obtaining various statistics on disability access. A list of
37 the requested statistical data will be sent to members by e-mail.
38

39 Jürgen Dostert suggested that DSA may want to consider setting up an email discussion forum
40 where statistics could be posted and the committee members could communicate freely. Much
41 comment ensued from the members as to whether a closed forum or an open electronic forum
42 should be used. Suzy Ambrose indicated that the committee meeting is being conducted under
43 the Bagley- Keene Open Meeting Act. Information presented in an e-mail forum would need to
44 be accessible and available to all which may be difficult for staff to ensure.
45

46 **TASK:** Staff will consider the request to establish an electronic forum within the
47 constraints of the state government by Section 508 and will report back at the May 11
48 meeting.
49
50

51 **Introduction to Selected Presentations in Regulating Disability Access**

52
53 Mr. Smith opened the second half of the meeting by passing out a form for capturing the
54 committee's ideas and comments on the Assumed Roles and Duties of the Access Specialist.
55
56

1 At the next meeting we will discuss potential roles and come to an understanding of the roles of
2 the Access Specialist

3
4 **TASK:** Staff will follow up with an electronic version of this document for discussion at
5 the next meeting.
6

7 **Attorney General's Civil Rights Enforcement**

8 *Suzanne (Suzy) Ambrose, Supervising Deputy Attorney General*
9

10 Ms. Ambrose described and gave a brief background on how the Attorney General's Civil Rights
11 Enforcement Section came to be. She described the Attorney General's three part initiative.
12 First, the initiative focused on education by sending letters to local building officials. Three
13 sample letters are in the CASp binder. The second part focused on legislation to improve
14 disability access. The AG sponsored several pieces of legislation; SB 262 amongst them. The
15 third part of the initiative is enforcement.
16

17 The AG's office continues to focus on disability access enforcement and on processing its
18 pending cases. Ms. Ambrose described the process they use for reviewing access complaints
19 and for improving enforcement by local governments. General discussion ensued regarding the
20 resolution of complaints.
21

22 Mr. Smith asked Ms. Ambrose to talk about the duty of the line deputies in the enforcement role.
23 Ms. Ambrose responded that the AG's Office hires experts to survey sites to identify the
24 problem. She suggested that often when a complaint on one item is received, the expert goes
25 to the site to verify the problem, and finds additional violations which are reported and added to
26 the investigation. Experts are also hired to monitor compliance with stipulated judgments
27 negotiated by the Attorney General's Office and the local agency. Ms. Ambrose indicated that
28 the Civil Right's Enforcement Section handles approximately 30 disabled access investigations
29 per year.
30

31 Dan Larsen commented that as an access trainer for Building Officials, he responds to
32 approximately 3-4 complaints per week.
33

34 **Accessibility in California Public School Construction**

35 *Rod Higgins, Senior Architect, DSA*
36

37 Rod Higgins provided an overview of the problems he encountered working 25 years in private
38 practice before joining the Division of the State Architect. To improve access in public schools
39 DSA is actively trying to develop a process to assist the builder/architect with a self evaluation
40 tool to ensure their plans are complete and accurate before presenting them to the Division of
41 the State Architect for review. The purpose is to reduce the multiple back checks that can occur
42 during the plan reviews process.
43

44 Pete Guisasola commented that State level plan submittal quality is high; however, local level
45 plan submittal often needs improvement. Local developers are focusing hard on just getting
46 buildings built. Mr. Guisasola would like to see the gap filled and hopes the CASp will move the
47 field in that direction; and effect things from design to construction.
48

49 Mr. Dostert indicated that he too answers many access questions from qualified architects that
50 aren't familiar with accessibility issues and code. He sees a need to provide an avenue for a
51 "specialist's specialist." He sees a need to assist DSA when needed with plan review requests
52 at a moment's notice.
53

54 Mr. Smith asked what the role of the DSA project inspector was. Mr. Higgins responded that the
55 Inspectors are field engineers that inspect. They are there to ensure that the construction is
56 completed per DSA plan specification.
57

Surveys of Existing Facilities and Transitional Plans

Jürgen Dostert, Sally Swanson and Associates

Mr. Dostert used PowerPoint for his presentation on access compliance surveys and the development of Transition Plans. He divided surveys into four general categories: voluntary; federally-mandated; state-mandated; and litigation-related. This was followed by a description of survey methodology and of its end product. He also summarized the steps undertaken by a surveyor as part of developing a Transition Plan. Mr. Dostert provided a list of federal and state accessibility regulations, which he feels prospective access specialists should understand. In closing, he offered his opinion on additional expertise to be considered in the development of eligibility criteria for access specialists. Mr. Dostert provided committee members with a printed version of his presentation.

Texas Architectural Barriers Program

Mark Smith, Program Development, DSA

Mr. Smith gave a brief summary of this program. He indicated there are 330 registered specialists in Texas whom are overseeing almost 9,000 projects, or 30 projects per specialist.

Mr. Larsen mentioned that California projects may be double the number of those in Texas; speculating that Los Angeles alone could likely review the same number of projects as Texas.

Mr. Dostert noted that it is important to look at the Texas version of the Access Specialist program. He perceived that the committee could extract information from the lessons learned in Texas. Mr. Dostert asserts that establishing a governing board for access specialists is very important.

Patricia Barbosa asserted that Texas did not have State access laws which made it easy to establish a program using only the federal ADA requirements. Since California operated under the more restrictive Title 24, our task is more complicated.

Critique of Pending Legislation AB 2594

Patricia Barbosa, Principal Attorney

Ms. Barbosa agreed to speak to the committee from her perspective of not supporting SB 262 for the following reasons:

1. She was skeptical that the committee will be able to develop standards across the board for ADA and Title 24. She has sued and won many access related cases and knows that the issue of discrimination is not simple. She believes the issue of certifying someone in California should include an adjunct education portion.
2. She felt that the certification process would be a precursor to people being sued. She indicated that planning, government enforcement, and voluntary work cannot take the place of the problem itself. Lawsuits have an educational purpose.

In regards to AB 2594, it does two things:

1. It deters enforcement
2. Identifies a specific scope of work for the Access Specialist

Ms. Barbosa explained why she felt AB 2594 should be opposed. The access issues affecting most buildings noncompliance relate to having no bathroom, parking, or programs that are accessible. The issue of readily achievable requires a business to evaluate the barrier. Education and training regarding accessibility needs to improve.

1 Mr. Dostert commented that ADA compliance alone is not sufficient. He asserts that he has yet
2 to survey a fully-compliant toilet room; and, projects he has surveyed have been deficient in
3 meeting the State's signage requirements.

4
5 Mr. Abrams agreed with Ms. Balboa's comments. He indicated that the goal is to provide
6 resources people can use become compliant. He believes it is bad public policy to pass
7 AB2594. General comments indicated that too many individuals currently involved in
8 constructing new buildings, and renovating and removing barriers, are ill educated and under
9 educated. The certification process is not a way to avoid lawsuits. Mr. Abrams feels it is
10 imperative to find the incentive for building operators to want to do the right thing, beyond the
11 scope of this law.

12
13 Mr. Smith commented that Michael Mankin's emphasis for the certification is on the education
14 piece of the bill.

15
16 Mr. Larsen also encouraged the education aspect of the program. He also had some concern
17 that we will need to address and enforce issues related to 11a (housing).

18
19 Mr. Rubin mentioned that persons with hearing impairments should be used to improved
20 aspects of specific training lessons.

21
22 **Public Comment**

23 Tim Fallis of Human Adaption spoke and was pleased with SB 262's education piece for the
24 public. He feels it is creating a re-awareness of the rights and responsibilities of all.

25
26 Cynthia D. Waddell, JD of ADA/508 Compliance MCS Educational Services was pleased to see
27 that the implementation of SB 262 has begun. [Note: due to staff error, specific information/
28 comments was not fully captured for this report].

29
30 **Next Meeting Date**

31 Date: May 11, 2004

32 Time: 12:30-4:30

33 Location: 1102 Q Street, Suite 5100, Conference Room B, Sacramento

34
35 The committee voted to meet on the second Tuesday of each month though December.

36
37 **Adjournment**

38 Ms. Dahlgren thanked all participants for their attendance. The meeting adjourned at
39 approximately 4:15 pm.